

REMARKS

By this amendment, claim 1 is revised to place this application in condition for allowance. Currently, claims 1-15 are before the Examiner for consideration on their merits.

In response to Applicant's amendment of July 22, 2005, the Examiner has withdrawn the rejections based on Gaskill and Genz, and rejects claims 1, 2, 6, 8, and 15 under 35 U.S.C. § 102(b) based on Swiss 343,194 (Swiss '194). In making this rejection, the Examiner asserts that Swiss teaches the claimed limitations. The remaining claims 3-5, 7, and 9-14 are indicated as containing allowable subject matter.

In responding to Applicant's arguments, the Examiner notes that the argument that the rotation area allows for displacement of the whole of the dynamic branch and core is not reflected in the claim language. While Applicant believes that the way in which the rotation area was previously defined in the claims sufficiently distinguished the claims over Swiss '194, claim 1 has been amended to clarify this aspect of the invention. Now, claim 1 recites that the rotation area allows the dynamic branch and core as a whole to be displaced relative to the static branch.

It is contended that this limitation defines a structure comprising the dynamic branch, static branch, core and rotation area that is not taught in Swiss '194. As previously argued, the configuration of the seal of Swiss does not permit the dynamic branch and core to be displaced as does the instant invention. In the rejection, the Examiner observes that the notch that is part of the core between the branches 41 and 42 is a rotation area that provides mobility to the lips. While this may be true, the

rotation area formed by the notch does not permit the dynamic branch 41 and core 43 of Swiss '194 as a whole to be displaced. Since claim 1 now defines the rotation area to be such that the dynamic branch and core as a whole are displaced, Swiss '194 cannot be said to teach the claimed rotation area. Lacking this feature of the claim, Swiss '194 cannot support a rejection under 35 U.S.C. § 102(b).

Since claim 1, as amended, is no longer anticipated by Swiss '194, the Examiner can only rely on 35 U.S.C. § 103(a) to further reject this claim. However, in order to do so, the Examiner must have some reason to modify Swiss '194 so as to arrive at the invention of claim 1. Applicant contends that there is no such motivation in the prior art to make such a change. Any allegation of obviousness can only be the result of the Examiner's use of hindsight to formulate such a rejection. Since the hindsight application of the prior art in light of Applicant's disclosure is expressly forbidden through Federal Circuit case law, any rejection based on 35 U.S.C. § 103(a) could not be sustained on appeal.

Lacking a basis under 35 U.S.C. §§ 102(b) and 103(a), the Examiner has no choice but to allow claim 1 and its dependent claims.

Accordingly, the Examiner is requested to examine this application in light of this response and pass claims 1-15 onto issuance.

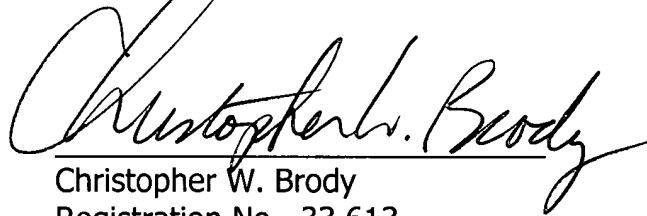
If the Examiner believes that an interview with Applicant's attorney would be helpful in expediting prosecution of this application, the Examiner is invited to telephone the undersigned at 202-835-1753.

The above constitutes a complete response to all issues raised in the Office
Action dated October 19, 2005.

Again, reconsideration and allowance of this application is respectfully requested.

Applicant petitions for a one month extension of time. Submitted herewith is the
petition fee of \$120.00 in the form of a check. Please charge any fee deficiency or
credit any overpayment to Deposit Account No. 50-1088.

Respectfully submitted,
CLARK & BRODY

A handwritten signature in cursive script, reading "Christopher W. Brody", written over a horizontal line.

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